IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1736 OF 2005

Bajaj Auto Limited & anr. Petitioners
vs.
Unit Trust of India & ors. Respondents

Mr.Janak Dwarkadas, Sr.Counsel with Mr.Pradeep Sancheti i/b.M/s.Dhru & Co. for the petitioners.

Mr.Virag Tulzapurkar, Sr.Counsel with Mr.P.A.Sawant and Ms.Najma Shaikh i/b.M/s.Vijil Juris for respondents 1 to 4.

Mr.R.A.Dada, Sr. Counsel with Mr.Kumar Desai i/b. M/s.Maneksha & Sethna for respondent no.5.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 9th October, 2006

P.C.

IL & FS Mutual Fund had floated a scheme which on respondent no.1 taking over IL & FS Mutual Fund came to be known as the UTI-Growth & Value Fund-Bonus Plan. Petitioners were some of the investors in the said Fund. Respondent no.5 had issued a circular dated 12th December, 2003. One of the requirements of the said circular was that no person could hold more than 25% of the Units in any Mutual Fund scheme.

2. From the affidavit filed by Rajesh Bhojani dated 21.2.2005 from paragraph 8, it appears that holding of petitioner no.1 exceeded 25%. It is the case of

respondent no.1 that they tried various attempts to attract more investors to the said plan so that the holding of petitioner no.1 would be reduced below 25% limit. Despite the best efforts as nothing could be realised, senior officers of respondents 2 to 4 requested the petitioner no.1 to redeem excess holding which was in their interest as also in the interest of the plan. Ultimately vide letter dated 23.12.2004 respondent no.4 again requested petitioner no.1 to redeem some of its Units. Ultimately the scheme was wound up as on 1.2.2005. During the pendency of the petition,the petitioners moved this Court for withdrawal of the amounts of the Units value without prejudice to their rights and by an interim order of 10.2.2005 certain directions were given by this Court. On 19.4.2005 another order came to be passed by this Court whereby respondents 1 to 4 were directed to issue cheques in favour of the petitioners for the amount which the petitioners were due and entitled to. In so far as the other parties who had not withdrawn the amount, UTI was permitted to send the cheques to the said parties. We had directed that it was open to the said parties to encash the said cheques and if they do not want to do so, they can return the said cheques. This was subject to the order to be passed by this court in the pending petitions.

3. It is the case of the petitioners that petitioners

have approached this court firstly to declare the circular dated 12.12.2003 issued by respondent no.5 as illegal, bad in law and unenforceable; a further direction was sought by way of a writ in the nature of certiorari or direction to quash and set aside the winding up, UTI Growth & Value Fund-Bonus Plan and the impugned notice dated 1.2.2005; relief was also sought by way of writ of mandamus to direct the respondents not to implement the decision to wind up the UTI Growth and Value Fund-Bonus Plan and not to despatch the redemption warrants.

4. The fact remains that as on 1.2.2005 the plan has been wound up. The question before this Court is whether we should consider the reliefs as prayed for. The petitioners were one of the investors of the Fund which has been closed down. In our opinion, considering that the Fund has been wound up, it is not necessary for us to go into the issue as to whether the circular dated 12.12.2003 is illegal or not. Respondents 1 to 4 who are bound by the circular at least have chosen not to challenge that circular.

. The other main contention as urged on behalf of the petitioners is that on account of premature winding up, the tax benefits which they would have received are being denied to them. Our attention is invited by the learned counsel for SEBI to the Addendum to the Fund and

more specifically clause (6) of the Bonus Policy, a portion of which reads as under:

> "As per the opinion received by the Fund, declaration of bonus does not tantamount to distribution of income. As a result, the Fund will not be paying any distribution tax on the bonus declared. It must be clearly understood that a tax status expressed above is based on the opinion received by the Fund. However, the Fund does not make any representation on the tax status, the procedures for ascertaining the tax benefits, nor does the fund make any representation regarding any legal interpretations. In view of the individual nature of tax benefits, each investor is advised to consult their own tax advisors with respect to the specific tax implications arising out of their participation in the bonus plan."

It will therefore be clear that respondents 1 to 4 in the addendum had put the investors on notice in so far as the tax benefits are concerned.

5. The issue before us is whether we can grant any relief to the petitioners considering the winding up of the Fund and withdrawal by large number of investors of their investments including by the petitioners though without prejudice. It will not be open to this court to direct at this stage that the Fund be revived. Once that be the position, the question so far as prayer clause (a) remains purely academic and we are not called upon to go into the issue of the decision making process by which the Mutual Fund was wound up.

6. It was also submitted that respondents 1 to 4 had misread the circular and had wound up the scheme without proper consideration of the circular. We are not again called upon to consider that issue as we are not entertaining this petition to decide that contention as the Fund has been wound up and that issue in so far as the reliefs sought in the present petition would be academic. In so far as money which continues to remain invested, the respondents 1 to 4 are directed to return the amount with necessary interest to the investors whose monies continue to be with them.

7. We make it clear that if the petitioners have any reliefs against the respondents 1 to 4, the disposal of this petition would not foreclose any right that the petitioners may have against respondents 1 to 4. In our opinion, considering the facts and circumstances, this would not be a fit case where this court should exercise extraordinary jurisdiction. In the light of that petition stands disposed of.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)